WP No.11076/2017

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13TH DAY OF APRIL 2017**

R

**PRESENT**

**THE HON'BLE MR. JUSTICE H.G.RAMESH**

**AND**

**THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA**

**WRIT PETITION NO.11076/2017 (EDN-MED-ADM)**

**BETWEEN:**

Dr.(Ms.) RACHANA KISHORE UBRANGALA
D/O DR. KISHORE KUMAR UBRANGALA
AGED ABOUT 23 YEARS
RESIDING AT "THRIPTHI"
15-13-693/4, SHIVABHAGH, KADRI
MANGALURU – 575 002 ... PETITIONER

(BY SRI SRIDHAR PRABHU, ADVOCATE)

**AND:**

1. ST. JOHN'S NATIONAL ACADEMY
   OF HEALTH SCIENCES
   ST. JOHN'S MEDICAL COLLEGE
   ADMISSIONS OFFICE
   SARJAPUR ROAD, BENGALURU – 560 034
   REPRESENTED BY ITS REGISTRAR

2. MEDICAL COUNCIL OF INDIA
   POCKET-14, SECTOR-8
   DWARKA PHASE-1, NEW DELHI – 110 077
   REPRESENTED BY ITS REGISTRAR

3. KARNATAKA EXAMINATIONS AUTHORITY
   SAMPIGE ROAD, 18TH CROSS
   MALLESHWARAM, BENGALURU – 560 012
   REPRESENTED BY ITS EXECUTIVE DIRECTOR

4. STATE OF KARNATAKA
   HEALTH AND FAMILY WELFARE DEPARTMENT

(MEDICAL EDUCATION)
M.S.BUILDING, BENGALURU – 560 001
(REPRESENTED BY THE PRINCIPAL SECRETARY
TO THE GOVERNMENT)

5. THE UNION OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
DEPT. OF HEALTH AND FAMILY WELFARE
'A' WING, NIRMAN BHAVAN
NEW DELHI – 110 001
REPRESENTED BY ITS SECRETARY

6. RAJIV GANDHI UNIVERSITY OF HEALTH
SCIENCES, 167, 32ND E CROSS ROAD
4TH T BLOCK EAST, PATTABHIRAMA NAGAR
JAYANAGAR, BENGALURU – 560 041
BY ITS REGISTRAR

7. THE DIRECTOR
ST. JOHN'S NATIONAL ACADEMY (AMENDED V/C/O
OF HEALTH SCIENCES DATED 21.03.2017)
ST. JOHN'S MEDICAL COLLEGE
BENGALURU – 560 034 ... RESPONDENTS

(BY SRI K.G.RAGHAVAN, SENIOR COUNSEL FOR
SRI NISCHAL DEV AND SRI PAARAS PANDEY,
ADVOCATES FOR R1 & R7;
SRI N.KHETTY, ADVOCATE FOR R2;
SRI N.K.RAMESH, ADVOCATE FOR R3 & R6;
MS. NILOUFER AKBAR, AGA FOR R4;
ASSISTANT SOLICITOR GENERAL FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE PROCESS OF ADMISSION FOR POSTGRADUATE PROGRAMME FOR THE ACADEMIC YEAR 2017-2018 CONDUCTED BY THE FIRST RESPONDENT AS ARBITRARY, ILLEGAL & ULTRA VIRES THE PROVISIONS OF THE INDIAN MEDICAL COUNCIL ACT, 1956, AND THE LAW DECLARED BY THE HON'BLE SUPREME COURT OF INDIA, AS DETAILED IN THE POSTGRADUATE PROSPECTUS 2017-2018 OF ST.JOHN'S MEDICAL COLLEGE, BANGALORE 560 034 AND CONSEQUENTLY QUASH THE POSTGRADUATE INTERVIEW LIST PUBLISHED BY THE FIRST RESPONDENT VIDE ITS COMMUNICATION DATED 10TH FEBRUARY, 2017 PRODUCED AS ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD FOR PRELIMINARY HEARING AND ON IA.NO.1/2017 FILED ON 01.04.2017 FOR VACATING OF INTERIM ORDER OF STAY DATED 21.03.2017 AND HAVING RESERVED FOR ORDERS ON 07.04.2017 AND THE MATTER COMING ON FOR PRONOUNCEMENT OF ORDERS THEREON, THIS DAY, **H.G.RAMESH J.,** MADE THE FOLLOWING:

**Order on I.A.No.1/2017**

**H.G.RAMESH, J. :**

**1.** The real question that requires to be considered in this case is as to whether respondent no.1-St. John's Medical College, Bengaluru, which is stated to be an unaided minority educational institution is justified in admitting students to Postgraduate courses by following its own procedure without the seats being allotted to it for admission by the Common Counselling Authority mandated under Regulation 9A of the Postgraduate Medical Education Regulations, 2000. In other words, whether an unaided minority educational institution is also governed by Regulation 9A in the matter of admission to Postgraduate medical courses.

**2.** Respondent no.1-College ('the College') claims to have admitted students by following its own procedure by

giving weightage to several other factors, like 125 marks for Interview, 75 marks for Practical test, 150 marks for Rural Service, 50 marks for Roman Catholic Community Members and 50 marks for Religious Sisters(Nuns) (total marks-450), apart from taking into consideration the ranking/score obtained by the students in National Eligibility-cum-Entrance Test (NEET) held for 1500 marks. This is evident from the following averments made in the application (I.A.No.1/2017) filed for vacating of the interim stay:

> "55. The Respondent No.1 submits that, however, as explained in the earlier paragraphs, the merit of candidates for admissions to Respondent No.1 college is decided based on certain other professional considerations, such as their ability to demonstrate practical awareness of the academic syllabus and their performance at the interview stage. This is so, because it has been the experience of Respondent No.1 that the fact of a candidate obtaining a relatively higher score in the written examination does not by itself testify to the practical proficiency of the candidate."
>
> (underlining supplied)

The College seeks to justify the admissions made by it by relying on Article 30(1) of the Constitution of India.

**3.** With the above preface, we proceed to examine the application (I.A.No.1/2017) filed by the College for vacating of the interim stay order dated 21.03.2017. By the interim

order, the further process of admission is stayed and the College is directed to keep one seat of MD (Paediatrics) vacant. The interim order reads as follows:

> " **JPJ** & NKSJ:
> 21.03.2017
>
> We have heard Mr.Doreraj B.H., learned counsel appearing for the petitioner, Mr.N.K.Ramesh, learned Standing Counsel for respondent nos.3 and 6 and Ms.Niloufer Akbar, learned AGA for respondent no.4.
>
> It *prima facie* appears that the MCI Regulation provides for the NEET ranking and such criteria will be diluted if any other marks are considered like practical test, interview etc.,
>
> The grievance on the part of the petitioner is that though he has secured higher marks in the NEET, he has not been considered in the provisional list and less meritorious students as per NEET result are considered for admission.
>
> Learned counsel for the petitioner during the course of the hearing has tendered a copy of the notice on the website of respondent no.1 college which prima facie is objectionable.
>
> Hence, notice returnable on 23.3.2017.
>
> Mr.N.K.Ramesh, learned Standing Counsel and Ms.Niloufer Akbar, learned AGA waives notice on behalf of respondent nos.3 & 6 and 4 respectively.
>
> It would be open to the petitioner to serve a copy to the learned counsel Mr.N.Khetty who normally appears for respondent no.2-MCI.
>
> It would be open to the petitioner to serve a copy on the Asst.Solicitor General for respondent no.5.
>
> So far as respondent no.1-College is concerned, hand summons permitted by today.
>
> Additionally, the Director of respondent no.1 College who has issued the notice on website of College shall also be impleaded as party respondent no.7. Notice is also ordered to be issued to respondent no.7 with a further direction that respondent no.7 in view of the notice on the website, shall remain personally present before this Court.
>
> *By ad interim order, it is directed that the further process of admission shall remain stayed and if the fees*

> *is not collected, there shall be stay against collection of the fees by respondent no.1-College.*
>
> *Further, in any case, one seat of MD Paediatrics shall be kept vacant.*
>
> It would also be open to respondent no.4 as well as respondent no.6 to communicate this order to respondent no.1-College.
>
> Copy of the order shall be supplied to the learned counsel appearing for respondent nos.3 & 6 and respondent no.4."
>
> (underlining supplied)

**4.** We have heard Sri Sridhar Prabhu, learned counsel for the petitioner, Sri K.G.Raghavan, learned Senior Counsel for the College, Sri N.Khetty, learned counsel for respondent no.2-Medical Council of India and perused the record.

**5.** The case of the petitioner is that candidates with lower NEET score/ranking than herself were considered for admission. The admission of students to the College is not solely based on the ranking/score of the candidates in NEET. This, according to the petitioner, has vitiated the admission process, and hence, the entire admission process of the College requires to be set aside. The prayers in the writ petition are as follows:

> "WHEREFORE, the petitioner pray that this Hon'ble Court may be pleased to:
>
> a) Issue appropriate writ, order or direction to quash entire process of admission for postgraduate programme for the academic year 2017-2018 conducted by the 1st Respondent as arbitrary, illegal, *ultra vires* the

provisions of the Indian Medical Council Act, 1956 and the law declared by the Hon'ble Supreme Court of India as detailed in the Postgraduate Prospectus 2017-2018 of St.John's Medical College, Bangalore 560 034 and consequently quash the Post Graduate Interview List published by the 1st Respondent vide its Communication Dated 10th February, 2017 produced above as ANNEXURE-A.

b) Issue appropriate writ, order or direction to quash entire process of selective counseling being conducted by the 3rd Respondent by excluding 1st Respondent institution and leaving out non-government quota seats in private medical institutions in the State of Karnataka and consequently quash e-Brochure Karnataka State PG ET-2017 published by the 3rd Respondent that its official website is produced above as Annexure-B.

c) Grant cost of the Writ Petition; and

d) Pass any other appropriate writ, order or direction as the Hon'ble Court deems fit to grant under the circumstances of the case, in the interest of justice."

**6.** Sri K.G.Raghavan, learned Senior Counsel appearing for the College contended that Regulation 9 of the Postgraduate Medical Education Regulations, 2000 is not applicable to unaided minority educational institutions and Regulation 9A is violative of Article 30(1) of the Constitution, and hence, the College can't be subjected to the admission procedure of allotment of seats by the Common Counselling mandated by Regulation 9A. In support of his contention, he referred to several decisions of the Supreme Court including the eleven Judge Bench decision in *T.M.A. Pai Foundation* [(2002)8 SCC 481]. He

also submitted that validity of Regulation 9A is challenged by the College in Writ Petition Nos.12953-12954/2017.

**7.** The College claims that the entire admission process to all Postgraduate courses was complete on 10.03.2017 i.e. a day prior to the coming into force of Regulation 9A, and hence, the interim stay granted by this Court on 21.03.2017 requires to be vacated. It was submitted that the College is an unaided minority educational institution, and hence, it is entitled to have its own admission procedure to admit students of its choice by taking into consideration the other factors referred to above, apart from considering the NEET ranking of the candidates. Accordingly, the College seeks to justify the petitioner's non-selection.

**8.** The question is whether an unaided minority medical educational institution is entitled, by virtue of the right conferred on it under Article 30(1) of the Constitution, to have its own admission procedure contrary to Regulation 9A to admit students to the Postgraduate medical courses. Article 30(1) of the Constitution of India states that *"All*

*minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice"*. It is now well settled that rights conferred under Article 30(1) of the Constitution are not absolute. **They are subject to regulatory measures for the maintenance of standards and excellence in education which are necessary in the national interest. A falling education system inevitably leads to a failing nation**.

**9.** We will now refer to three decisions of the Supreme Court on the subject. On providing a Centralised Counselling (single-window system) to regulate admissions vis-à-vis the rights of unaided minority educational institutions, a seven Judge Bench in *P.A.Inamdar v. State of Maharashtra* [(2005)6 SCC 537] has stated that it does not cause any dent on their rights. The following observations made therein require to be noticed:

> "136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable

> expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the Common Entrance Test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. **Holding of such common entrance test followed by centralized counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit *inter se* of the students so chosen.**
>
> 138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, **it would be permissible to regulate admissions by providing a centralized and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis**. ……"
>
> (Emphasis supplied)

**9.1** A five Judge Bench in *Modern Dental College & Research Centre v. State of M.P.* [(2016)7 SCC 353] has upheld a state legislation passed by the M.P. State Legislature which *inter alia* provided for a common entrance test for determination of merit of the candidates followed by

a Centralised Counselling for the purpose of merit based admission to the entire sanctioned intake in all private unaided medical colleges (**including minorities**) through a single-window procedure by the State Government. It was held therein that the process of admission encompasses not only centralised entrance test but Centralised Counselling as well and that the admission process provided in the legislation did not infringe the rights of the minorities. The legislation was held relatable to Entry 25 of List III of the Constitution. The following observations made therein in the context of the rights of the minorities require to be noticed:

> "55. It would be necessary to clarify the position in respect of educational institutions run by minorities. Having regard to the pronouncement in T.M.A. Pai Foundation, with lucid clarifications to the said judgment given by this Court in P.A.Inamdar, it becomes clear that insofar as such regulatory measures are concerned, the same can be adopted by the State in respect of minority-run institutions as well ……
>
> 97. …….. ……. As such, the mechanism of regulations as envisaged under the impugned laws is legal, constitutional, fair, transparent and uphold the primary criteria of merit. The same does not infringe on the fundamental rights of either the minorities or the non-minorities to establish and administer educational institutions and must as such be upheld as valid."

**9.2** It is also appropriate to refer to the following observations made by a three Judge Bench in *Sankalp*

*Charitable Trust v. Union of India* [(2016)7 SCC 487] as to the law laid down in *Modern Dental College* [(2016)7 SCC 353]:

> "32. In a recent Constitution Bench judgment dated 2-5-2016, in *Modern Dental College & Research Centre v. State of M.P.*, the stand of the private medical colleges (**including minorities**) that conducting of entrance test by the State violated the right of autonomy of the said colleges, has been rejected. The State law providing for conducting of entrance test was upheld, rejecting the contention that the State had no legislative competence on the subject. At the same time, it was held that the admission involved two aspects. First, the adoption of setting up of minimum standards of education and coordination of such standards which aspect was covered exclusively by List I Entry 66. The second aspect is with regard to implementation of the said standards which was covered by List III Entry 25. On the said aspect, the State could also legislate. **The two entries overlap to some extent and to that extent List I Entry 66 prevailed over the subject covered by Entry 25**."
>
> (emphasis supplied)

**10.** The above three decisions of the Supreme Court clearly show that regulating admissions by a single-window system does not cause any dent in the right of minority unaided educational institutions to choose the categories of students it is at liberty to choose from, for eg., minority students of the State, minority students from the other states, non-minorities etc. Common Counselling mandated under Regulation 9A will check minority and non-minority

institutions from choosing students arbitrarily from within the sources they are entitled to choose from.

**11.** We will now refer to the provisions regulating admission to Postgraduate medical courses. Section 10D of the Indian Medical Council Act, 1956 and Regulations 9 & 9A of the Postgraduate Medical Education Regulations, 2000 provide a mechanism for merit based selection to all Postgraduate medical courses in all medical institutions in the country on the basis of the merit list of the National Eligibility-cum-Entrance Test (NEET). The provisions read as follows:

> "**Section 10D.** There shall be conducted a **uniform entrance examination** to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:
>
> Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination.
>
> **Regulation 9. Procedure for selection of candidate for Postgraduate courses shall be as follows:**
>
> I. There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance

Test for admission to Postgraduate Medical Courses' in each academic year. The overall superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct 'National Eligibility-cum-Entrance Test for admission to Postgraduate courses'.

II. 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%.

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

Provided further that this entire exercise shall be completed by each medical college / institution as per the statutory time schedule for admissions.

III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50$^{th}$ percentile in 'National Eligibility-cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40$^{th}$ percentile. In respect of candidates as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum marks shall be at 45$^{th}$ percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in 'National Eligibility-cum-Entrance Test for Postgraduate courses.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/ Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post Graduate courses from the said merit lists only.

Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and difficult areas shall be as defined by State Government/Competent authority from time to time.

V. No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub Clause (II) above shall be admitted to any Postgraduate courses in the said academic year.

VI. In non-Governmental medical colleges/institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Percent) of the seats shall be filled by the concerned medical colleges/institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

VII. 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as defined by State Government/Competent authority from time to time.

VIII. The Universities and other authorities concerned shall organize admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super speciality courses each year. For this purpose, they shall follow the time schedule indicated in Appendix-III.

IX. There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super speciality courses

under any circumstances. The Universities shall not register any student admitted beyond the said date.

X. The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956. The institution which grants admission to any student after the last date specified for the same shall also be liable to face such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year.

**Regulation 9A. Common Counseling: (w.e.f. 11.03.2017)**

(1) There shall be a **common counseling** for admission to all Postgraduate Courses (Diploma/ MD/ MS/ DM/ M.Ch.) in all Medical Educational Institutions **on the basis of merit list of the National Eligibility-cum-Entrance Test.**

(2) The designated authority for counselling for the 50% All India Quota seats of the contributing States shall be conducted by the Directorate General of Health Services. Such counseling as per the existing scheme shall be only for Diploma and MD/MS courses.

(3) The counseling for all Postgraduate Courses (Diploma/ MD/ MS/ DM/ M.Ch.) in all Medical Educational Institutions in a State/Union Territory, including Medical Educational Institutions established by the Central Government, State Government University, Deemed University, Trust, Society or a Company/ **Minority Institutions**/ Corporations shall be conducted by the State Government. Such common counselling shall be under the over-all superintendence, direction and control of the State Government."

(Emphasis supplied)

**12. The mechanism of Common Counselling created under Regulation 9A (extracted above) brings in a game changer reform of transformational nature in admission of students to Postgraduate medical courses in the country.** Effect of Regulation 9A is that admission to all Postgraduate

medical courses in all the Colleges shall be conducted by a Common Counselling only on the basis of merit list of NEET. NEET is a uniform entrance examination mandated under Section 10D and Regulation 9 for admission to all Postgraduate medical courses in the country. In view of Regulation 9A, no admission to Postgraduate medical courses under any kind of quota, like Scheduled Castes, Scheduled Tribes, Other Backward classes, Non-resident Indians quota, Management quota etc., can be made without the seat being allotted by the Common Counselling Authority under Regulation 9A on the basis of merit list of the National Eligibility-cum-Entrance Test (NEET). **Any admission contrary to Regulation 9A is void.** It is relevant to state that the admission procedure mandated under Regulation 9A applies for admission to all Postgraduate courses in all medical educational institutions, whether of the minorities or of the non-minorities. **Common Counselling mandated under Regulation 9A will check minority and non-minority institutions from choosing students arbitrarily from within the sources they are entitled to choose from.**

**13.** In the context of the question raised, it is appropriate to state that the subject covered under Section 10D and Regulations 9 & 9A for holding the uniform entrance examination (NEET) and conducting the Common Counselling can be traced to the legislative field under Entry 66 of List I of the Constitution.

**14.** 'Rule of law' requires the College to follow the procedure for admission mandated under Regulation 9A. Regulation 9A has come into effect from 11.03.2017, and therefore, is applicable to admissions from the academic year 2017-2018. Hence, any admission, to any Postgraduate course for the academic year 2017-2018, if contrary to Regulation 9A, is void. The procedure adopted by the College to admit the students to Postgraduate courses is not only contrary to Regulation 9A but also contrary to the principle of merit inasmuch as the entire selection of students is not based solely on the score/ranking obtained by the candidates in NEET. Hence, we decline to vacate the interim stay granted by this Court on 21.03.2017. **I.A.No.1/2017 is accordingly dismissed**.

**15.** Still there is time for the College to follow the admission procedure laid down in Regulation 9A. Hence, in the interest of justice, the College is permitted to participate in the Common Counselling provided in Regulation 9A and to admit students for the academic year 2017-2018 on allotment of seats by the Common Counselling Authority. The College is given liberty to approach the Common Counselling Authority without any further delay. The students who are stated to have been given admission to the College and the petitioner are also permitted to participate in the Common Counselling subject to their fulfilling the eligibility criteria to participate in the Counselling and their approaching the Common Counselling Authority forthwith.

**16.** We deem it necessary to state that allotment of seats through the Common Counselling to unaided minority educational institutions has to be done in conformity with their rights under Article 30(1) of the Constitution. Hence, an unaided minority medical educational institution is entitled to indicate its choice of preferences to the Common Counselling Authority in the matter of admission of students

to its institution, to the extent of its entire sanctioned intake, in conformity with its rights under Article 30(1) of the Constitution, for eg., minority students of the State for whose benefit the institution was established, minority students from the other states, non-minorities etc.; the Common Counselling Authority shall make allotment by following the principle of *inter se* merit within the categories of students the institution is at liberty to choose from. If seats allotted by the Common Counselling Authority to an unaided minority educational institution is not in terms of its choice of preferences and the principle of *inter se* merit, it is open to the institution to challenge the allotment in accordance with law.

**17.** We also deem it appropriate to clarify that the State does not get any right under Regulation 9A to appropriate any seats available for admission in an unaided minority medical educational institution. Any interpretation to the contrary will make the Regulation offend Article 30(1) of the Constitution. Regulation 9A only regulates admissions to all Postgraduate courses in all medical educational institutions

through a Common Counselling ensuring merit based selection within the categories of students which the institution is at liberty to choose from, and thereby satisfying the triple test of being fair, transparent and non-exploitativeness referred to in *Modern Dental*.

**18.** It is stated that validity of Regulation 9A is challenged by the College in Writ Petition Nos.12953-12954/2017. Hence, all the petitions require to be heard together. The matter needs consideration.

Issue *Rule Nisi*.

The College is given liberty to move for early hearing of the petitions. It is clarified that this order shall not prejudice the parties at the hearing of this petition and the petitions in W.P.Nos.12953-12954/2017 filed by the College.

**Sd/-**
**JUDGE**

**Sd/-**
**JUDGE**

hkh.